

TEMPLATE FOR SUBMISSIONS (part a)

Name of country (for Members of the committee)	
Name of organization (for observers to the committee)	Center for International Environmental Law
Contact person and contact information for the submission	Dharmesh Shah, dshah@ciel.org Rachel Radvany, rradvany@ciel.org David Azoulay, dazoulay@ciel.org Andrés del Castillo, adelcastillo@ciel.org
Date	August 14, 2023

Elements not discussed at INC-2

1. Scope

What is the proposed scope for the future instrument?

Which types of substances, materials, products and behaviors should be covered by the future instrument?

Proposed scope:

We believe it is unnecessary to include a dedicated article on scope in the treaty. [UNEA Resolution 5/14](#) already makes it very clear that the scope of the instrument should be “the full life cycle of plastic,” and this should be reflected in both the article defining the objective of the instrument and the articles providing control measures. The addition of an article on scope is unnecessary, would potentially create difficulties or conflicts in interpreting the text, and would be a waste of precious negotiation time by the INC.

Explanatory Text:

Member States at UNEA 5.2 agreed that the instrument should be “based on a comprehensive approach that addresses the full life cycle of plastic...” This is already-negotiated and agreed text which is adequately captured in the proposed objectives for the Treaty, and the INC should not spend time discussing it extensively. For our proposal on the definition of “full life cycle of plastic,” please see our definitions compilation in our [first submission to INC-3](#).

2. Principles

What principles could be set out in the future instrument to guide its implementation?

Proposed principles:

Plastic pollution is interconnected with many, if not all, environmental and social issues. As a result, many principles may be relevant to the development and implementation of the treaty. In particular, it is key that the future Internationally Legally Binding Instrument to end plastic pollution be underpinned by a human rights-based approach.

However, we do not believe that including a laundry list of international, environmental, human rights and other principles in a singular article is the most effective way to operationalize these principles in the treaty implementation.

We therefore advise not to spend time negotiating an article (or preambular paragraph) dedicated to principles. The INC members should rather ensure that such principles and approaches, in particular human rights, are reflected and operationalized directly and throughout the text of the treaty.

Relevant rights and principles that should be operationalized in the treaty provisions include:

Right to a healthy environment: the UN Human Rights Council and General Assembly “Recognizes the right to a clean, healthy and sustainable environment as a human right”

Right of Access to Information: in the Universal Declaration of Human Rights, it is specified that everyone has the right to “seek, receive, and impart information and ideas...”

Right to Effective Participation: “environmental issues are best handled with the participation of all citizens...each individual shall have ... the opportunity to participate in decision-making processes”

Polluter-Pays Principle: “the polluter should, in principle, bear the cost of pollution...”

Precautionary Principle: Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation

Other rights and principles that could guide the development of effective provisions to end plastic pollution include:

Principles on the protection of workers from exposure to toxics: 15 principles to help States, businesses and other key actors respect and protect workers from toxic occupational exposures and

to provide remedies for violations of their rights. “States have a duty to protect the human rights of workers through the prevention of exposure to toxic substances” and those “Duties and responsibilities to prevent the exposure of workers to toxic substances extend beyond borders.”

Non-regression: “prohibits any recession of environmental law or existing levels of environmental protection...”

Rights of future Generations: the recently published Maastricht Principles on the Rights of Future Generations found that human rights declarations and instruments do not contain temporal limits and therefore extend to future generations. “Human rights extend to all members of the human family, including both present and future generations.”

Waste hierarchy: “a set of priorities for the efficient use of resources and the minimization of environmental impacts from waste management.”

Explanatory Text:

All principles in the Rio Declaration are already agreed to underpin the plastics treaty. Resolution 5/14 states that the future instrument should take “into account, among other things, the principles of the Rio Declaration on Environment and Development, as well as national circumstances and capabilities...”

There are many principles in other international agreements, such as the Escazú Agreement, Aarhus Convention, and the Strategic Approach to Chemicals Management, as well as many principles from UN Human Rights bodies, that should be considered when developing the provisions of the plastics treaty.

Right to a healthy environment: The [UN Human Rights Council](#) and [General Assembly](#) recently recognized the human right to a clean, healthy, and sustainable environment. This should be a core tenet of the plastics treaty, given the [clearly documented impacts on the enjoyment of human rights](#) throughout the life cycle of plastics.

Public participation and access to information: Full and effective public participation is essential to developing and implementing the plastics treaty. The post-COVID society encounters several challenges that directly harm the principle of public participation enshrined in the Article 10 of the Rio Declaration. The Aarhus Convention and the Escazú Agreement have characterized public participation in environmental matters as an issue of human rights. Any process under the UN, and in particular the process to develop an international legally binding instrument to end plastic

pollution, should ensure accessible, inclusive, transparent, responsive, and accountable [public participation](#).

The right of access to information is key to ensure effective implementation of the plastics treaty and is key to allow effective participation. It should be clearly operationalized in provisions ensuring full transparency throughout the life cycle of plastics. Such provisions are key to ensure the protection of workers throughout the life cycle of plastics (including at the production, manufacture and waste management phases), will allow consumers to make educated choices about what products they use, and are important for the recyclers and waste sorters on the downstream side. Both of these rights are recognized in the Rio Declaration, the Escazú and Aarhus Conventions, which encompass many of the Member States in the plastics treaty process, and the right of access to information is further recognized in the the Universal Declaration of Human Rights and the Strategic Approach to International Chemicals Management.

In the European Union (EU), this principle was operationalized through the “No Data, No Market” rule in the EU regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). This approach is relevant for the plastics treaty due to the many toxic substances used in plastics and their production, and the myriad of impacts on workers, consumers and communities living near production and disposal sites.

Below are excerpts where these principles appear in different Agreements and Conventions (emphasis added):

- [UDHR Article 19](#): “Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to **seek, receive and impart information and ideas** through any media and regardless of frontiers.”
- [Rio Principle 10](#): “Environmental issues are best handled with the **participation of all concerned citizens**, at the relevant level. At the national level, each individual shall have **appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities**, and the **opportunity to participate in decision-making processes**. States shall facilitate and encourage public awareness and participation by **making information widely available**.”
- [Escazú](#): “The objective of the present Agreement is to guarantee the full and effective implementation in Latin America and the Caribbean of the **rights of access to environmental information, public participation in the environmental decision-making process...**”
- [Aarhus](#): “In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the **rights of access to information, public participation in decision-making...**”

- [Rio Principle 20](#): “**Women have a vital role** in environmental management and development. Their **full participation is therefore essential** to achieve sustainable development.”
- [Rio Principle 21](#): “**The creativity, ideals and courage of the youth of the world should be mobilized** to forge a global partnership in order to achieve sustainable development and ensure a better future for all.”
- [Rio Principle 22](#): “**Indigenous people and their communities and other local communities have a vital role** in environmental management and development because of their knowledge and traditional practices. **States should recognize and duly support their identity, culture and interests and enable their effective participation** in the achievement of sustainable development.”
- [SAICM Article 15b-c](#): “To ensure, for all stakeholders: **That information on chemicals throughout their life cycle, including, where appropriate, chemicals in products, is available, accessible, user friendly, adequate and appropriate to the needs of all stakeholders.** Appropriate types of information include their effects on human health and the environment, their intrinsic properties, their potential uses, their protective measures and regulation; ... To ensure that, in making information available in accordance with paragraph 15 (b), confidential commercial and industrial information and knowledge are protected in accordance with national laws or regulations or, in the absence of such laws or and regulations, are protected in accordance with international provisions. **In the context of this paragraph, information on chemicals relating to the health and safety of humans and the environment should not be regarded as confidential;**”
- [REACH regulation Article 5](#): “mixtures or in articles **shall not be manufactured in the Community or placed on the market unless they have been registered** in accordance with the relevant provisions of this Title where this is required.”

Precautionary principle: There is ample evidence documenting the harmful effects plastics have on human health and the environment throughout its life cycle. While there are knowledge gaps about specific impacts of certain individual chemicals used in plastics, or on the long term effects or characterization of certain aspects of plastic pollution, there is a clear scientific consensus on the fact that there is sufficient scientific evidence to act now. The lack of comprehensive data or remaining knowledge gaps should not prevent action to address clear and potentially irreversible harm, which is exactly the intent and purpose of the precautionary principle.

Below are excerpts where these principles appear in different Agreements and Conventions (emphasis added):

- [Rio Principle 15](#): “In order to protect the environment, the **precautionary approach shall be widely applied** by States according to their capabilities. Where there are threats of serious or irreversible damage, **lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.**”

- [*Preamble to the Convention on Biological Diversity*](#): “where there is a threat of significant reduction or loss of biological diversity, **lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.**”
- [*International Tribunal on the Law of the Sea*](#): “In the view of the Chamber, this has initiated a trend towards making this approach part of customary international law.”¹
- [*International Court of Justice*](#): “the precautionary approach may be relevant in the interpretation and application of the provisions of the Statute”²
- [*UN Global Compact Principle 7*](#): “Businesses should support a precautionary approach to environmental challenges.”

Replacing hazardous and or regulated chemicals with equally hazardous (but non regulated) chemicals is a common practice across industries engaged in the manufacture and use of hazardous substances often referred to as “[regrettable substitutions](#).” Including provisions to prevent such regrettable substitution is a key aspect of operationalizing the precautionary principle in the future Plastics Treaty to avoid prolonging negative human health effects on consumers when chemicals used in a certain type of plastics are replaced by similarly, or possibly more hazardous chemicals. The European Chemical Agency offers a good framework for the effective use of data collected under Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), Classification Labelling and Packaging (CLP) and Biocidal Product Regulation (BRP) in performing hazard and risk assessment of alternatives to help prevent the instances of regrettable substitution.

The concept of non-regrettable substitution would also arguably extend to the division of food as feedstock for substitutes. Experts have argued that [effective use](#) should direct biomass towards food first, and avoid losses and wastes before these are used for feed and/or fuel. The use of food crops for the production of bioplastic/biofuels or other substitutes should espouse principles of bioethics as envisaged by [Nuffield Council for Bioethics](#).

Polluter Pays Principle: The Polluter Pays Principle, is internationally recognized in multiple Agreements and Conventions. While there is no controversy about operationalizing this principle in the Plastic Treaty, questions remain on how to do so. CIEL strongly supports the Ghana proposal for a Global Plastic Pollution Fee (GPFF) on producers as one of the ways to do so.

Below are excerpts where these principles appear in different Agreements and Conventions (emphasis added):

¹ Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, ITLOS Case No. 17, Advisory Opinion (1 February 2011), par. 135.

² International Court of Justice, Reports of Judgements, Advisory Opinions and Orders, Case Concerning Pulp Mills on The River Uruguay, Argentina V Uruguay, Judgement of 20 April 2010, par 164.

- [Rio Principle 16](#): “National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the **polluter should, in principle, bear the cost of pollution.**”
- [Article 3 of The International Convention on Oil Pollution Preparedness, Response and Co-operation](#): “**the polluter pays principle is the general principle to be applied for the purposes of this Convention**” This is relevant for the future LBI on plastic pollution, as oil will remain the key feedstock for the growth of the sector.
- [The Convention on the Transboundary Effects of Industrial Accidents](#): “Taking into account polluter-pays principle as a general principle of international environmental law” ... This is relevant given the transboundary nature of marine plastic pollution and remediation of the same.

Other rights and principles that could guide the development of effective provisions to end plastic pollution:

Principles on the protection of workers from exposure to toxic substances: Just transition is one of the core elements raised since the adoption of UNEA resolution 5/14. Workers are among the groups most exposed all along the supply chain of plastics, from workers in fossil fuel extraction and transport, to workers in petrochemical and plastics facilities, to waste pickers and workers in recycling facilities. As such, the treaty should take into account these principles, which help States to protect workers from toxic substances.

- [Human Rights Council Resolution 42/41](#): The 15 principles on the protection of workers from exposure to toxic substances is designed to help States, businesses and other actors respect and protect workers from toxic occupational exposures and to provide remedies for violations of their rights. The principles are based on existing international human rights law and standards, and cover topics such as hazard elimination, cross-border accountability, right to know, freedom of association, protection of whistle-blowers, and access to remedy. The principles state that “States have a duty to protect the human rights of workers through the prevention of exposure to toxic substances” and that those “Duties and responsibilities to prevent the exposure of workers to toxic substances extend beyond borders.”

Non-regression: MEAs can be seen as a way of implementing the principle of non-regression, as they aim to prevent or reduce environmental degradation and to promote sustainable development. The principle should be adopted in the zero draft to ensure that the future agreement does not allow for any backsliding or weakening of the existing environmental laws or standards related to plastic pollution at the national, regional or global level. It could also help to prevent loopholes or exceptions, establish a minimum level of environmental protection and deliver an effective and ambitious treaty.

- This principle is enshrined in the *Escazú Agreement*.
- Over [130 countries](#) now subscribe to this principle in at least one of their International Investment Agreements.

Rights of future generations: Human rights obligations do not have temporal limits - these rights must be protected for future generations as well as current ones. Plastics themselves last from generation to generation, as do their impacts – on the climate, biodiversity, and human health. Research is increasingly showing the negative impacts of plastics on children and infants, including recent studies which found microplastics in the placenta and babies born with plastics in [placentas](#) and [meconium](#). The increased production and use of plastic is also fuelling the unsustainable growth of the fossil fuel sector thus exacerbating climate change. The objective of the plastics treaty will not only protect generations today, but will also have positive impacts on generations to come.

- The [Maastricht Principles on the Rights of Future Generations](#) were developed by international human rights experts over the course of six years.

Waste hierarchy: Waste hierarchy is a priority order in waste prevention and management legislation and policy that helps deliver the best overall environmental outcomes by applying life cycle thinking to the overall impacts of the generation and management of waste. The [hierarchy](#) responds to financial, environmental, social and management considerations. The hierarchy articulates the need to prioritize, in this order (a) prevention; (b) preparing for reuse; (c) recycling; (d) other recovery; (e) disposal, and can be applied throughout all the stages of plastics' life cycle as defined by the BRS Secretariat (Sourcing/extraction phase; Chemical phase; Material phase; Dematerialization phase). The hierarchy also encourages minimization of GHG emissions. The hierarchy and its priorities should be used as a guidance for management and handling of plastic waste under the treaty.

- The [European Commission's Waste Framework Directive](#) establishes the waste hierarchy as a guiding concept for waste management and sets targets for preparing for re-use and recycling of waste materials by 2020, 2025 and 2035.
- [New Zealand's Waste Strategy](#) includes the waste hierarchy in the form of the '5Rs': reduce, reuse, recycle, recover and residual management.

Gender mainstreaming: The Beijing Platform for Action, adopted at the Fourth United Nations World Conference on Women in Beijing in 1995, made gender mainstreaming a key global strategy for achieving gender equality. [Gender mainstreaming](#) means that the views, experiences, knowledge and interests of both women and men are taken into account in policy-making, planning and decision-making. This demands explicit, systematic attention to relevant gender perspectives in all areas of the work of the United Nations. The future plastics treaty should operationalize gender

mainstreaming in its provisions, especially in the context of just transition, climate, public health and chemical safety, as women bear a larger burden of the negative impacts of plastic pollution on their livelihoods, health and environment.

[Mandates on Gender Mainstreaming at the Global Level](#) that strengthen the case for the inclusion of gender mainstreaming in the ILBI on ending plastic pollution.

- ECOSOC Agreed Conclusions on gender mainstreaming, 1997
- Twenty-third Special Session of the General Assembly, 2000
- United Nations system-wide policy on gender equality and the empowerment of women, 2006
- The 2030 Agenda for Sustainable Development, 2015
- Addis Ababa Action Agenda of the Third International Conference on Financing for Development, 2015
- ECOSOC Political Declaration on the Occasion of the Twenty-Fifth Anniversary of the Fourth World Conference on Women, 2020
- Mainstreaming a gender perspective into all policies and programmes in the United Nations system, 2022

3. Additional considerations

Provide any other relevant inputs, proposals or priorities here that have not been discussed at INC-2 (e.g. preamble; institutional arrangements, including governing body, subsidiary bodies, scientific and technical cooperation and coordination, and secretariat; final provisions including dispute settlements; and if appropriate annexes).

Proposed inputs:

Explanatory Text: